

An Application for Reconsideration

- by -

Raed Eid
(the “Applicant”)

- of a Decision issued by -

The Employment Standards Tribunal
(the “Tribunal”)

pursuant to section 116 of the
Employment Standards Act R.S.B.C. 1996, C.113 (as amended)

PANEL: Carol L. Roberts

FILE No.: 2020/090

DATE OF DECISION: July 7, 2020

DECISION

SUBMISSIONS

Raed Eid on his own behalf

OVERVIEW

1. This is an application by Raed Eid (the “Applicant”) for a reconsideration of Tribunal Decision 2020 BCEST 45 (the “Original Decision”), issued by the Tribunal on May 15, 2020.
2. The Applicant worked as a pharmacist for Specialized Therapeutic Solutions Ltd. (“STS” or the “Employer”) for five hours on March 20, 2019. His rate of pay was \$45 per hour and the Employer paid the Applicant \$225.
3. In September 2019, the Applicant filed a complaint with the Employment Standards Branch alleging that the Employer had contravened the *Employment Standards Act*, R.S.B.C. 1996 c. 113 (“ESA”) by a) failing to provide a wage statement; b) failing to pay the amounts within the time frame required in the ESA; and c) failing to make legal deductions from the total pay. Although the Appellant sought a monetary award, the amount did not represent a claim for wages.
4. After investigating the complaint, a delegate of the Director of Employment Standards determined that the matters to which the *ESA* applied – failing to pay wages within the time provided in the *ESA* and failing to provide a wage statement - had been resolved and that no further action would be taken.
5. The Director found there was no provision in the *ESA* requiring employers to make statutory withholdings for Canada Pension, Employment Insurance and Income Tax, and that the issuance of a pay statement had resolved the statutory requirement found in section 27(1)(g) of the *ESA*.
6. The Director determined that the *ESA* was remedial, that administrative penalties were not intended to be punitive and were typically applied to cases where a determination ordered payment of wages an employer had refused to pay. The Director found that the Applicant had received the amount agreed upon for work performed and that the Applicant had received a wage statement.
7. The Director exercised the discretion provided in section 76(3)(b) and (i) and ceased investigating the complaint.
8. The Tribunal Member decided that the appeal was appropriate for consideration under section 114 of the *ESA* and assessed whether the appeal should be dismissed or allowed to proceed. He concluded that the appeal had no merit, was frivolous and an abuse of process, and that it had no reasonable prospect of succeeding.
9. The Member noted that:

The appeal and the supporting appeal submission contain nothing that is relevant to the grounds of appeal upon which it is based. It is unnecessary to outline all elements of the arguments made

by [the Applicant] or to attempt to relate them to the chosen grounds of appeal. The appeal does nothing more than assert STS must be fined for perceived contraventions of the *ESA*, allege the Director erred by failing to impose administrative penalties on STS and generally criticize how several complaints filed by [the Applicant] against a number of employers were being handled by the delegate of the Director who was assigned them, asserting her Determination is a “joke” and her conduct “disgraceful.”

10. The Tribunal Member dismissed the appeal under section 114(1) of the *ESA*. The Member noted that the Applicant had his rights under the *ESA* addressed by the Director and that he had no separate right relative to the administrative penalty scheme outlined in the legislation.

11. The Member found that the appeal was “devoid of merit,” as the Applicant had not advanced any arguments or provided any evidence to challenge or controvert the Director’s findings, nor had he challenged the rationale set out in the Determination.

12. The Member stated:

The sum and substance of the Determination is that those aspects of the complaint which were governed by provisions in the *ESA* were resolved through the complaint process, that no contravention of the *ESA* had been found and no requirement had been imposed, that the purposes of the *ESA* did not justify administrative penalties as a punitive measure on matters which had been resolved without a determination and the imposition of a requirement under section 79 of the *ESA*, that the Director had discretion in the circumstances to not find a contravention and had discretion to cease investigation of the complaint.

[The Applicant] has failed to meaningfully address any of the above matters and has failed to show there was an error of law by the Director on any of them.

13. The Member concluded that the Applicant had not demonstrated an error in the Determination or established that the Director had failed to observe the principles of natural justice.

14. The Member confirmed the Determination.

ISSUE

15. There are two issues on reconsideration:

1. Does this request meet the threshold established by the Tribunal for reconsidering a decision?
2. If so, should the decision be cancelled or varied or sent back to the Member?

ARGUMENT

16. In his reconsideration application, the Applicant contends that the Employer misrepresented the position and the wage rate and seeks to have the matter reviewed for a contravention of section 8 of the *ESA*.

THE FACTS AND ANALYSIS

17. The *ESA* confers an express reconsideration power on the Tribunal. Section 116 provides:
- (1) On application under subsection (2) or on its own motion, the tribunal may
 - (a) reconsider any order or decision of the tribunal, and
 - (b) confirm, vary or cancel the order or decision or refer the matter back to the original panel or another panel.

1. The Threshold Test

18. The Tribunal reconsiders a decision only in exceptional circumstances. The Tribunal uses its discretion to reconsider decisions with caution in order to ensure finality of its decisions and to promote efficiency and fairness of the appeal system to both employers and employees. This supports the purposes of the *ESA* detailed in section 2 “to provide fair and efficient procedures for resolving disputes over the application and interpretation of this *Act*.”
19. In *Milan Holdings*, BCEST # D313/98, the Tribunal set out a two-stage analysis in the reconsideration process. The first stage is for the Tribunal to decide whether the matters raised in the application for reconsideration in fact warrant reconsideration. The primary factor weighing in favour of reconsideration is whether the applicant has raised questions of law, fact, principle or procedure which are so significant that they should be reviewed because of their importance to the parties and/or their implications for future cases. The reconsideration panel will also consider whether the applicant has made out an arguable case of sufficient merit to warrant the reconsideration.
20. The Reconsideration process is not meant to allow parties another opportunity to re-argue their case or to have the Director assess an entirely new complaint as the Applicant seeks to have the Reconsideration Panel do.

Analysis and Decision

21. The Applicant has failed to demonstrate that this is an appropriate case for the exercise of the Tribunal’s Reconsideration power. He does not identify any errors in the Tribunal’s decision or raise an arguable case that the decision should be reconsidered.
22. Section 114(1) of the *ESA* provides that:
- (1) At any time after an appeal is filed and without a hearing of any kind the tribunal may dismiss all or part of the appeal if the tribunal determines that any of the following apply:
 - (a) the appeal is not within the jurisdiction of the tribunal;
 - (b) the appeal was not filed within the applicable time limit;
 - (c) the appeal is frivolous, vexatious or trivial or gives rise to an abuse of process;
 - (d) the appeal was made in bad faith or filed for an improper purpose or motive;

- (e) the appellant failed to diligently pursue the appeal or failed to comply with an order of the tribunal;
- (f) there is no reasonable prospect that the appeal will succeed;
- (g) the substance of the appeal has been appropriately dealt with in another proceeding;
- (h) one or more of the requirements of section 112 (2) have not been met.

23. I am not persuaded, in reviewing the Determination, the arguments made on appeal and the Original Decision, that the Applicant has raised significant questions of law that should be reviewed because of their importance to the parties or their implications for future cases.

24. I agree with the Member that the Applicant's submissions on appeal were "devoid of merit" and were frivolous and an abuse of process. There is no basis for the Tribunal to exercise the reconsideration power.

ORDER

25. The request for reconsideration is denied. I order that the Original Decision 2020 BCEST 45, issued May 15, 2020, be confirmed.

Carol L. Roberts
Member
Employment Standards Tribunal